

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

November 15, 2006 Session

KATHERINE L. DAVIS v. JULIE MATTESON, ET AL.

**A Direct Appeal from the Chancery Court for Davidson County
No. 04-997-III The Honorable Ellen H. Lyle, Chancellor**

No. M2005-02705-COA-R3-CV - Filed on December 20, 2006

Appellant challenges trial court's order denying Appellant's motion to set aside an order imposing sanctions and granting a default judgment, which was entered after Appellant's prolonged refusal to respond to discovery requests. We affirm

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed

W. FRANK CRAWFORD, P.J., W.S., delivered the opinion of the court, in which ALAN E. HIGHERS, J. and HOLLY M. KIRBY, J., joined.

Sean J. Martin of Nashville, Tennessee for Appellant, Julie Matteson, individually and d/b/a Matteson Heat, Air, and Refrigeration

Mike J. Urquhart of Nashville, Tennessee for Appellee, Katherine Davis

OPINION

I. Facts and Procedure

On April 2, 2004, Katherine L. Davis ("Ms. Davis," "Appellee," "Plaintiff") filed a complaint against Julie Matteson ("Ms. Matteson," "Appellant," "Defendant"), individually and d/b/a/ Matteson Heating, Air and Refrigeration in the Chancery Court of Davidson County, Tennessee. Ms. Davis sought collection of a prior judgment which Ms. Davis won against Mr. Don Baker ("Mr. Baker") on a partnership theory, claiming that Ms. Matteson had formed a partnership with Mr. Baker and was doing business with him as Matteson Heating, Air and Refrigeration. On July 12, 2004, Ms. Davis filed a motion for default judgment against Ms. Matteson for failure to file responsive pleadings. On July 23, 2004, Ms. Matteson, represented by counsel, appeared and filed an answer. Ms. Davis's motion for default was stricken.

Between January 2005 and May 2005, Ms. Matteson failed to timely respond to repeated discovery requests by Ms. Davis' counsel. A motion to compel and for sanctions was filed by Ms. Davis on May 23, 2005. On June 16, 2005, Matteson filed a *pro se* document with the court

that contained incomplete answers to discovery requests. On June 24, 2005, Ms. Matteson's counsel, Robert J. Turner, was also allowed to withdraw.

On July 8, 2005, the trial court heard the motion to compel and impose sanctions. The court entered its order on July 15, 2005. In its order, the trial court found that Ms. Matteson had failed to appropriately respond to discovery requests. Therefore, the trial court ordered the following:

1. The Defendant shall file with the Clerk and Master and serve upon Counsel for the Plaintiff no later than August 26, 2005 a notice of appearance of new counsel or in the alternative a notice stating that she is proceeding *pro se*.
2. The Defendant shall file with the Clerk and Master and serve upon Counsel for the Plaintiff a fully and completely answered set of Interrogatories and Request for Production of Documents, which were served upon her previously by the Plaintiff.

The trial court further ordered that the Motion to Compel and Impose Sanctions be held in abeyance until August 26, 2005, in order to allow Ms. Matteson time to comply with the order. The trial court also stated in its order that if Ms. Matteson failed to comply by the August 26, 2005 deadline, an order granting Plaintiff's request to impose sanctions by striking the pleadings of the Defendant and entering a default judgment for the amounts requested in the complaint would be entered.

On August 29, 2005, Ms. Davis submitted a notice of non-compliance and an order seeking enforcement of the sanctions set in the July 15, 2005 order. On September 7, 2005, Ms. Matteson filed a *pro se* document titled "Response to plaintiffs' attorney on motions & orders received by defendant of which the court has not [sic] record" alleging that Matteson's former counsel, and Ms. Davis' counsel were in collusion. In that September 7 filing, Ms. Matteson also stated that she "informed [her counsel's] assistant that [she] had no intention of producing these [discovery] documents."

On September 12, 2005, the court entered a default judgment in the amount of \$27,800.96 against Ms. Matteson. The court also issued a Memorandum stating the reasons why it was entering the order granting sanctions in the form of a default judgment. On September 30, 2005, Ms. Matteson, with new counsel, filed a motion to set aside the prior order entered on September 12, 2005. Ms. Matteson also filed completed discovery requests at that time. The motion was heard on October 14, 2005, and the court issued a written order on October 25, 2005 denying Matteson's request.

The court order states in pertinent part:

This matter came before the Court on the motion of the defendant to set aside the default judgment. The defendant has now retained new counsel, Sean Martin. Wisely, as a premise for the motion to set aside, Mr. Martin cured the defendant's noncompliance with discovery. He also argued vigorously and persuasively that the defendant now understands her obligations in this matter.

Moved by Mr. Martin's advocacy the Court, nevertheless, must deny the motion to set aside. The less drastic alternative of setting aside the default and ordering the defendant to pay the plaintiff's attorney's fees, perhaps, would be in order if the defendant, even after delaying for six months from responding to discovery and providing inadequate responses, had merely not complied with the Court's order to provide complete responses. But the defendant's abusive and belligerent September 7, 2005 filing exceeds grossly negligent noncompliance and escalates the defendant's conduct to deliberate disrespect. The Court denies the motion to set aside the default judgment because to do so would not account for and would not address the baseless and scurrilous September 7, 2005, *pro se* filing made by the defendant.

It is therefore ORDERED that the motion to set aside the default judgment is denied.

Ms. Matteson filed a notice of appeal on November 28, 2005.

II. Issue

Ms. Matteson raises one issue for review:

Whether the trial court abused its discretion in denying defendant's Motion to Set Aside Default Judgment, where a default judgment was entered after defendant's responsive pleadings and discovery responses - which contained valid and complete defenses to the cause of action against her - were stricken as a sanction for discovery delays and a *pro se* filing which the trial court found disrespectful.

III. Analysis

Rule 37.02 of the Tennessee Rules of Civil Procedure provides that a trial court faced with a party who fails to obey an order to provide discovery may render a judgment by default against the disobedient party. See *Yearwood, Johnson, Stanton & Crabtree, Inc. v. Foxland Development Venture*, 828 S.W.2d 412 (Tenn. Ct. App. 1991). The Rule states:

If a deponent; party; an officer, director, or managing agent of a party; or, a person designated under Rule 30.02(6) or 31.01 to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under Rule 37.01 or Rule 35, or if a party fails to obey an order entered under Rule 26.06, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

* * *

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

* * *

Tenn. R. Civ. P. 37.02.

Although this sanction is extreme, it is appropriate “where there has been a clear record of delay or contumacious conduct.” *In re Beckman*, 78 B.R. 516, 518 (M.D. Tenn. 1987). The decision to grant or deny a default judgment as a sanction lies within the sound discretion of the trial court.

Rule 55.02 of the Tennessee Rules of Civil Procedure provides that a court may, for good cause shown, set aside a default judgment in accordance with Rule 60.02. Rule 60.02 of the Tennessee Rules of Civil Procedure sets forth the criteria the court should consider in deciding whether to set aside such a judgment. The Rule states in its entirety:

Rule 60.02 Mistakes; Inadvertence; Excusable Neglect; Fraud, etc.

On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (3) the judgment is void; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that a judgment should have prospective application; or (5) any other reason

justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1) and (2) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this Rule 60.02 does not affect the finality of a judgment or suspend its operation, but the court may enter an order suspending the operation of the judgment upon such terms as to bond and notice as to it shall seem proper pending the hearing of such motion. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to set aside a judgment for fraud upon the court. Writs of error coram nobis, bills of review and bills in the nature of a bill of review are abolished, and the procedure for obtaining relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Tenn. R. Civ. P. 60.02.

The function of Rule 60.02 is “to strike a proper balance between the competing principles of finality and justice.” *Jerkins v. McKinney*, 533 S.W.2d 275, 280 (Tenn. 1976). Rule 60.02 operates as “an escape valve from possible inequity that might otherwise arise from the unrelenting imposition of the principle of finality imbedded in our procedural rules.” *Thompson v. Fireman’s Fund Ins. Co.*, 798 S.W.2d 235, 238 (Tenn. 1990). However, “[b]ecause of the ‘principle of finality,’ the ‘escape valve’ should not be easily opened.” *Banks v. Dement Constr. Co.*, 817 S.W.2d 16, 18 (Tenn. 1991) (quoting *Toney v. Mueller Co.*, 810 S.W.2d 145, 146 (Tenn. 1991)). The disposition of motions under Rule 60.02 is best left to the discretion of the lower court, and such decisions are reversed only if they constitute an abuse of that discretion. *Spruce v. Spruce*, 2 S.W.3d 192, 194 (Tenn. Ct. App. 1998) (quoting *Underwood v. Zurich Ins. Co.*, 854 S.W.2d 94 (Tenn. 1993)).

To set aside a judgment under Rule 60.02, the burden is upon the movant to prove that she is entitled to relief, and there must be proof of the basis on which relief is sought. See *Brumlow v. Brumlow*, 729 S.W.2d 103, 106 (Tenn. Ct. App. 1986); *Jefferson v. Pneumo Servs. Corp.*, 699 S.W.2d 181, 186 (Tenn. Ct. App. 1985). A motion for relief from a judgment pursuant to Rule 60.02 addresses the sound discretion of the trial judge. Accordingly, the scope of review on appeal is limited to whether the trial judge abused her discretion. See *Toney v. Mueller Co.*, 810 S.W.2d 145 (Tenn. 1991); *Travis v. City of Murfreesboro*, 686 S.W.2d 68, 70 (Tenn. 1985).

The Tennessee Supreme Court recently addressed the abuse of discretion standard. *Doe 1 ex rel. Doe 1 v. Roman Catholic Diocese of Nashville*, 154 S.W.3d 22 (Tenn. 2005). The

court stated, “A trial court abuses its discretion when it applies an incorrect legal standard or reaches a decision which is against logic or reasoning and which causes an injustice to the complaining party.” *Id.* at 42.

In this case, Ms. Matteson asserts that the trial court abused its discretion in refusing to set aside its September 12, 2005 order granting a default judgment in favor of Ms. Davis. Ms. Matteson argues that under the “catch-all” provision of Rule 60.02, the trial court should have granted her motion to set aside the default judgment. Ms. Matteson argues that she submitted a meritorious defense to the action and that her *pro se* status hampered her understanding of the discovery process. Ms. Davis, on the other hand, argues that Ms. Matteson was given ample chances to respond to the court’s orders and intentionally disobeyed the trial court’s rulings.

In its Memorandum and Order dated October 25, 2005, the trial court outlined its rationale for refusing to set aside the default judgment against Ms. Matteson. The trial court based its ruling on Ms. Matteson’s initial six month delay in responding to discovery requests and her inadequate responses to the discovery requests when she did respond. Further, the court noted that it had given Ms. Matteson additional grace time in which to respond to discovery requests, and Ms. Matteson not only did not respond, but she also filed an “abusive and belligerent” filing on September 7, 2005 which “exceed[ed] grossly negligent noncompliance and escalate[d] the defendant’s conduct to deliberate disrespect.”

As stated above, the trial court’s decision refusing to set aside the default judgment can only be overturned upon a finding of abuse of discretion. Under *Roman Catholic Diocese of Nashville*, 154 S.W.3d at 42, a trial court abuses its discretion in one of two ways. *Id.* First, the trial court abuses its discretion if it applies an incorrect legal standard. *Id.* Here, the court used the default judgment as a sanction allowable under Tenn. R. Civ. P. 37.02. Further, the court did not apply an incorrect legal standard in refusing to grant relief under Tenn. R. Civ. P. 60.02. Second, the trial court abuses its discretion if it reaches a decision which is against logic or reasoning and which causes an injustice to the complaining party. *Roman Catholic Diocese of Nashville*, 154 S.W.3d at 42. Here, the trial court’s decision was logical and reasonable. The trial court based its decision to uphold the default judgment based on Ms. Matteson’s deliberate refusal to comply with discovery requirements, even after additional time for providing the discovery responses was granted. Therefore, the trial court did not abuse its discretion in refusing to set aside the default judgment in this case.

IV. Conclusion

For the foregoing reasons, we affirm the order of the trial court. Costs of this appeal are assessed against the Appellant, Julie Matteson, and her surety.

W. FRANK CRAWFORD, PRESIDING JUDGE, W.S.